Supreme Court, U.S.
FILED

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971605 MAR 26 1998

OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1997

Clyde W. LaRue, et al.,

Petitioners,

v.

United States of America, its Collectors
of Internal Revenue Tax,
John Wendorff, et al.,

Respondents.

Writ of Certiorari

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Clyde W. LaRue, et al.,
2745 S. 6th. # 105
Springfield, Illinois 62703
217-652-2555/217-529-1573

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44 pp

QUESTION(S) PRESENTED

1. Whether 16th amendment removed requirement that Direct Tax be apportioned and that the apportionment be upon "among the several States?"

2. Whether 16th amendment allows United States to bypass several States authority and directly lay and collect taxes among the people of each Union State?

3. Whether phrase "among the several States" actually intends to include "among the several People?"

4. Whether phrase "among the several States" provide jurisdiction limitation upon United States, regardless of where phrase appears in Constitution?

5. Whether Fed. R. of Civ. Pr. and Fed. R. of Ap. Pr. accomplish what 1st amendment was adopted to prevent?

6. Whether Administrative office of the United States Courts abridges separation of powers?

7. Whether Federal Reserve note has any secured substance as 12 U.S.C. § 411, as amended, provides?

8. Whether unredeemable Federal Reserve note should be classified as "worthless security" pursuant to Congressional Commerce Clause authority @ 26 USC § 165(g)?

9. Whether "$" means dollars as defined in Coinage Act of 1792, as amended.

10. Whether Fed. note meets substance test of a U.S. Dollar?

11. Whether U.S. Obligation is monies substance?

12. Whether United States has power to Tax U.S. obligations?

13. Whether 16th Amendment allows U.S. to act intrastate?

14. Whether Labor and Servitude performed involuntarily constitute violations of 13th Amendment?

15. Whether United States has intrastate power to impose its taxing will upon Union State Citizen directly without apportion..?

16. Whether United States is accomplishing with 16th amendment what involuntary servitude clause in 13th amendment was adopted to prevent?

17. Whether Income Tax Act, Federal Reserve Act, Emergency Farm Mort. Act, Security Act & Gold Removal Act and 16th amendment are Unconstitutional?

18. Whether exercising redress has become impossible for non-attorneys to accomplish, rendering violations of 1st amendment?

19. Whether individual agents acting under color of authority can be named individually in 26 U.S.C. § 7433 damage action for recklessly and intentionally disregarding provisions of the law?

20. Whether Internal Revenue Service employees are classified as Agents of the United States Government?

21. Whether Citizens of a Union States and Residents of a Union States means the same by definition?

22. Whether petitioners' case is a "successive appeal" as defined in Operating Procedures Rule 6(b) for 7th Circuit.

23. Whether same three Judges whom rendered decision in 95-2768 could without prejudice to petitioners, consider merits of petitioners appeal.

24. Whether petitioners have right to revoke subject election and whether United States has right to silently ignore petitioners' revocation?

25. Whether District Court and 7th Circuit incorrectly construe facts of case?

26. Whether Judges Cummings, Pell,Jr. and Flaum incorrectly decide the facts in this case which distinguish 97-1635 from 95-2768?

27. Whether petitioners' exhausted their administrative remedies prior to commencement of 97-1635 pursuant to 26 U.S.C. § 7433, as amended?

28. Whether claims that United States is construing Federal Reserve notes received by petitioners as securities with value, when no such value attends to such securities, is sufficient to state a claim for which relief can be granted.

29. Whether Court errors in dismissing Clyde W. LaRue?

30. Whether United States Sovereign Immunity or Constitutional Rights is considered first involving jurisdiction?

31. Whether determination contained in Courts' orders involving statements of both Tax Protestors and Tax Protestors Lawsuits accomplished a Bill of Attainder against petitioners in violation of Constitution?

32. Whether service of process involving this lawsuit is satisfied against United State employees, in their individual capacities, when service is performed by and through the United States Postal Service, a non-party to this action, by Certified Mail, Restricted Delivery, upon each individually named defendant, as previously performed upon petitioners by defendants?

33. Whether United States employees, sued in their individual capacities, are subject to the same Federal Rules of Civil Procedure governing Default and Default Judgment, or any other rule for that matter, that all other non-employees of the United States government are strictly held to.

LIST OF PARTIES

[ ]All parties appear in the caption of the case on the cover page.

[x]All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Clyde W. LaRue,
Mark Hilvety,
Beverly Hilvety,
Thomas L. Magro,
Vicky Magro,
Debra L. LaRue,
Dale T. Hedberg,
Patricia A. Hedberg,
Neil Hilvety,
Ruth B. Hilvety,
Jeffrey S. Thorpe,
Ronald E. Ekiss,
Delmar Volentine,
Lori Damhorst,
Mark Damhorst,
Debra I. Damhorst,
Andrew J. Hortenstine,
Pamela A. Hortenstine,
John F. Koester,
Marcella K. Koester,
Rich McAdams,
Russell W. Corrigan,
Kimberly S. Corrigan,
Jeffery Gibbs,
Kimberly Kelly,
David Gibbs,
Jeff White,

For the Defendants

United States; United States of America; its Collector of Internal Revenue Tax, John Wendorff, Former District Director, John Wendorf, individually;
Robert W. Brock, District Director; Robert W. Brock, Individually;
Robert D. Kriege, Former Chief, Special Procedures Function; Robert D. Kriege, individually;
Jim Daniel, Chief Special Proceudres Function; Jim Daniel, individually;
Daniel L. Black, Former District Director; Daniel L. Black, individually;
H.A. Williamson, Revenue Officer; H.A. Williamson, individually;
Sam Randazzo, Revenue Officer; Sam Randazzo, individually;
John Ford, Group Manager, John Ford, individually;
V.A. Boeckman, Revenue Officer; V.A. Boeckman, individually;
Georgia L. House, Revenue Officer; Georgia L. House, individually;
Valerie Zeisset, Revenue Officer; Valerie Zeisset, individually;
Ralph B. Logan, Revenue Officer; Ralph B. Logan, individually;
J.D. Nolan, Revenue Officer; J.D. Nolan individually;
Kathryn L. Jeffers, Special Agent; Kathryn L. Jeffers, individually;
Patrick Calhoun, Special Agent; Patrick Calhoun, individually;
Sue Roderick, Special Agent; Sue Roderick, individually;
Bernard J. Coleman, Special Agent; Bernard J. Coleman, individually;
Larry Wirt, Special Agent; Larry Wirt, individually;

Robert Jacobs, Special Agent; Robert Jacobs, individually;
Bill McCormick, Special Agent; Bill McCormick, individually;
H. Matson, Special Agent; H. Matson, individually;
Gray Brown, Revenue Officer; Gary Brown, individually;
and any other John Does to be named.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Petitioner respectfully prays that a Writ of Certiorari issue in review of the judgement below.

OPINIONS BELOW

[x] For case from federal court:

The orders of the United States District Court appear at Appendix A to the petition.

The orders of the United States Court of Appeals for the Eighth Circuit appear at Appendix A to the petition.

JURISDICTION

[x] For cases federal court:

The date on which the United States District Court issued it order; January 14, 1997 and April 1, 1997.

The date on which the United States Court of Appeals for the Eighth Circuit Dismissed Petitioners' Appeal; September 8, 9, 1997.

Timely Petitions' for Rehearing **En Banc** were denied on October 30, 1997.

Extension of time was granted until March 27, 1998 on February 27, 1998.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a).

THIS PETITION IS IN AID OF APPELLATE JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States of America:
Under Article I;

Section Eight, Clauses One, Two, ~~Three~~, Four, Five, Six, Eighteen; and

Section Nine, Clauses Three, Four and Seven; and

Section Ten, Clause One;

Statutory Provision:

The Federal Reserve Act of December 23, 1913, and all its amendments including Section 16; codified at 12 U.S.C. § 411;

The Emergency Farm Mortgage Act of May 12, 1933, and all its amendments specifically Section 1(b)(1); codified at 31 U.S.C. § 5103.

The Security Act of May 27, 1933, and all its amendments codified beginning with 15 U.S.C. § 77(a);

The 1st Amendment
The 4th Amendment
The 5th Amendment
The 10th Amendment
The 13th Amendment
The 16th Amendment
12 U.S.C. § 411
26 U.S.C. § 165(g)
26 U.S.C. § 7433
28 U.S.C. § 1651(a)
28 U.S.C. § 1340
31 U.S.C. § 5103

RELIEF IS NOT AVAILABLE IN ANY OTHER COURT

Petitioners sought relief on issues and character involving income tax collection on mere receipt of unredeemable Federal Reserve notes promulgated by Congress as U.S. obligations since 1995. In the United States District Court for the Central District of Illinois, case # 95-2768; appealed to the 7th Circuit Court, case # 95-3036, resulting in the case herein. Petitioners are aware of numerous Union States whom petitioned for redress and yet through one reason or another have been denied access to supporting opinions of the Courts in regard to current imposition of income taxes, levied upon receipt of U.S. obligations in the form of un-redeemable Federal Reserve notes.

Petitioners believe there is no Judge outside of the One Supreme Court who is willing to consider the Constitution involving that of money, and/or their is not a Judge outside of the Supreme Court who knows enough about the issue to understand it. Either way, petitioners can not find relief in any other Court. The issues raised by petitioners are fundamental with regard to the first issue of every case filed, save a case filed by the United States, and that issue is the issue regarding the substance and then form of "filing fees." The Union States are in forced violation to Constitutional prohibitions and this Court is the **Court of last resort** for such unwarranted and unfounded violations. Petitioners are affected by Union State violations of Article One, Section 10, Clause 1, involving tender of debt.

STATEMENT OF THE CASE

1. On February 2, 1995, most petitioners commenced action 95-3036 styled Clyde W. LaRue, et al, v Collector of Internal Revenue and John Does 1 through 10,in the Central District of Illinois, Springfield Division, pursuant to 26 U.S.C. § 7433 of the Tax Payers Bill of Rights and 28 U.S.C. § 1340, alleging United States' refusal to accept revocation of certain voluntary elections held by Law, arguably made voluntarily by mistake of law, on the part of petitioners therein, and that respondents have refused to allow petitioners to revoke such elections by the exercise of fraud, coercion and Fear.

2. On May 8, 1995, the District Court in Illinois, dismissed petitioners' complaint pursuant to merits of respondents Motion to Dismiss; specifically due to another of petitioners errors in that petitioners failed to file Treasury Claims pursuant to 26 CFR 301.7433(e)(1-5), and that because of this error, petitioners' complaint deserved out right dismissal pursuant to Federal Rules of Civil Procedures 12(b)1 and 12(b)6.

3. Beginning in March of 1996, petitioners filed Treasury Claims pursuant to 26 CFR 301.7433 as the respondents and Court had suggested, awaiting a six month exhaustion ime period (26 U.S.C. § 7433(d)(1).

4. Petitioners appealed the district court's final order to the 7th Circuit Court of Appeals docket number 95-2768.

5. On September 3, 1996, during the six months time period, the 7th Circuit Court of Appeals entered its decision, finding the district court's judgement was affirmed and that Petitioners failed to exhaust administrative remedies. See appendix A.

6. On July 30, 1996, during 6 months of exhaustive time period at 26 U.S.C. § 7433, President Clinton amended Tax Payer Bill of Rights wherein petitioners were no longer held required to exhaust administrative remedies in order to justify civil damage action against United States pursuant to 26 U.S.C. § 7433, contrary to future order of Sept. 3, 1996, decision affirmed in 95-2768.

7. On September 26, 1996, after waiting approximately six months as determined in 95-3036, petitioners commenced new litigation pursuant to 26 U.S.C. § 7433 and 28 U.S.C. § 1340, evidencing complete and undeniable exhaustion of administrative remedy, whatsoever, styled Clyde W. LaRue, et al., v. United States, et al., Case No. 96-3270, as the 7th Circuit recently had affirmed.

8. On November 27, 1996, respondent filed 6 way motion, requesting among others, the District Court consider Motion to Dismiss filed in 95-2768, as if defendants original argument was still applicable herein.

9. On December 10, 1996, petitioners filed Motion to Strike and Motion for Summary Judgement against each respondent.

10. On January 14, 1997, district court docketed a order, affirming respondents Motion to Dismiss filed in 95-2768.

11. Between January 14, 1997 through March 4, 1997, the District Court capriciously struck docketed motions of petitioners for no legitimate reason.

12. On March 17, 1997, petitioners filed Notice of Appeal, growing exhausted of district court's prejudicial conduct.

13. On March 28, 1997, the Seventh Circuit Court of Appeals Ordered petitioners to file a "brief memorandum stating why this appeal should not be **stayed**" pending entry of a dispositive order involving sanctions show.

14. On April 1, 1997, district court entered **opinion** involving sanctions issue raised by 7th Circuit on March 28, 1997.

15. On May 27, 1997, briefing schedule was issued by Circuit Court and including in this ORDER of the 7th Circuit, petitioners were ORDERED "If (pro-se) appellants appeal from the denial of the post-judgement motion, they shall promptly file a motion to consolidate the appeals."

16. On September 8, 1997, the 7th Circuit Court of Appeals issued unpublished ORDER finding affirmance for the district court's order of January 14, 1997, and denying the rest of appellants appeal do to its September 9, 1997, Order.

17. On September 9, 1997, the Circuit Court issued another ORDER denying petitioners' timely Motion to Consolidate as ORDERED on May 27, 1997, by the Court.

18. On October 23, 1997, petitioners filed 2 Petitions for Rehearing pursuant to FRAP Rule 35 and 40 involving separately, the Circuit Court's Order of September 8, 1997, and September 9, 1997.

19. On October 30, 1997, 7th Circuit Court of Appeal denied petitioners' "Petition for Rehearing" which 7th Circuit found was filed on October 22, 1997, to which both petitioners' "Petitions for Rehearings" were hand delivered and stamp filed received on October 23, 1997, and not October 22, 1997.

20. On November 17, 1997, petitioners filed "Motion to Stay the Mandate," denied.

21. On January 27, 1998, petitioners request 60 day extension to file petitioners' Writ of Certiorari on/before March 27, 1998.

22. On February 27, 1998, petitioners were GRANTED an extension, allowing petitioners' Writ of Certiorari to be post marked on or before March 27, 1998, by U.S. Mail, and considered timely filed.

23. This Writ of Certiorari follows.

REASON FOR GRANTING THE PETITION

24. The 7th Circuit Court of Appeals refused to read petitioners documents filed in violation to Petitioners' right to appeal.

25. The One Supreme Court should Grant petitioners' Writ of Certiorari for the reason petitioners were denied right to fair appeal of district court's decision, contrary to the existence of FRAP 3.

26. Petitioners are numerous in number and collectively demand right to be heard and have been met with denial by all Courts.

27. The United States has no **MONEY** as enumerated in the Constitution, Federal Reserve notes are not money in form or substance and thus all power claimed involving taxation is fictitious claim of United States in equity.

28. The United States Court of Appeals for the 7th Circuit has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's enumerated power.

29. If the United States Court of Appeals for the 7th Circuit's final decision involving petitioners is allowed to remain, it would render petitioners' unalienable rights where "Congress shall make no law respecting 'the right of the people to petition the Government for a redress of grievance'" fictitious in nature.

30. The Supreme Court's decision in the **Gold** cases of 1934, are in need of review and overturned on grounds Federal Reserve note dollars and Money Dollars are no longer equivalent in trade, leaving each Union State in violation to Article I, § 10, Cl.1. prohibitions in violation to the United States of America's Constitution, causing damage to petitioners' rights to property.

31. The issues raised by petitioners in district court involve need for clarification upon separation of powers between United States and State and between United States and People as provided by 10th amendment.

32. The income tax laws produce effect of involuntary servitude, without choice, in opposition to 13th amendment.

33. The district court and United States Court of Appeals for the 7th Circuit are applying phrase "among the several States" in opposition to Supreme Court's mandate in U.S. v. Lopez 549 U.S.

34. Since at least 1862, the United States has exercised power to issue notes of credit which were intended to circulate as currency, but in fact, were not money.

35. Since at least 1913, Congress has authorized the issuance of Federal Reserve notes which purported to be redeemable in current monies substance and which are not.

36. Since at least 1933, the United States has issued or caused to be issued unredeemable Federal Reserve notes which purport to be Legal Tender when said notes do not conform to § 16 of the Reserve Act. Said notes are unredeemable, unauthorized and/or unwarranted pursuant to any Power involving the issuance of Securities of the United States and are subject to 26 U.S.C. § 165(g).

37. Petitioners are not involved in successive appeals, thus original panel commissioned in 95-2768 were incorrectly assigned in 97-1635 pursuant to Operating Procedure 6(b).

38. In opposition to appellate court order of September 8, 1997, petitioners did file treasury claims pursuant to 26 CFR 301.7433 and therefore petitioners did have a waiver of the sovereign immunity of the United States, although, since July 30, 1996, section 7433 invoked United States' waiver by merely alleging the statute and nothing else.

COURT DECISION IS VIOLATIVE OF 1ST AMENDMENT

39. On February 2, 1995, few appellants filed complaint seeking a "refund" or "return" of all improperly collected taxes. In general, plaintiffs claimed they are Citizens of Art. IV, § 3, cl. 1 Illinois.

40. Plaintiffs believed they had been improperly treated by the United States on grounds the United States was construing its enumerated authority beyond the scope of the Constitution. This case was 95-3036.

41. In March of 1995, the defendant United States, filed a Motion to Dismiss pursuant to the Courts' not having subjectmatter jurisdiction 95-3036.

42. On May 8, 1995, the District Court, Judge Mills, granted defendant's Motion to Dismiss due to plaintiffs' failure to record **exhaustion of their administrative remedies**.

43. Plaintiffs appealed and on March 21, 1996, the Appellate Court of Cummings, Pell, Jr. and Flaum issued an order dismissing all other appellants in 95-2768 on grounds that appellant LaRue was the only one to sign the "Notice of Appeal."

44. Beginning in March of 1996, and realizing that exhaustion of remedy appeared to be a real issue with the judiciary, petitioners each filed a treasury claim pursuant to 26 CFR 301.7433 on grounds this seemed to be the administrative remedy dealing with 26 U.S.C. § 7433 claims against the United States. The district court had misconstrued petitioners' complaint in attempting to compare petitioners' language of its complaint to that of a "refund" action pursuant to 26 U.S.C. § 7422. This was partly due to semantics and partly due to the defendants perfecting confusion on the judiciary, intentionally.

45. Appellants in 95-2768 and other appellants also contained in 97-1635, the appeal herein, began the faithful attempt to accomplish administrative exhaustion even though some petitioners were involved in an ongoing appeal in case # 95-2768. The rationale used was petitioners believe they have been wronged and deserve for the allegations of their complaint to be construed as true until proven otherwise and that an administrative procedure was not going to prevent final adjudication.

46. Petitioners, pursuant to 26 CFR. 301.7433 and 26 U.S.C. § 7433(d)(1), prior to its amendment, were allowed to maintain an action pursuant to 26 U.S.C. § 7433(a) upon being construed by the Court to have exhausted their administrative remedies pursuant to 26 CFR 301.7433-1(d)(2)(ii), that is "the date six months after the date an administrative claim is filed in accordance with paragraph (e) of this section."

47. Not forgetting President Clintons amendments to section 7433 on July 30, 1996, petitioners began filing treasury claims just in case the 7th Circuit found district court correct which they ultimately did.

48. Petitioners' six months from March of 1996 was due to expire in mid September of 1996. An option respondents had was to render a decision on petitioners' claims prior to the six months expiration as provided at 26 CFR 301.7433-1(d)(2)(i) which would likewise allow petitioners' action to be maintained in federal district court if petitioners were dissatisfied with respondents administrative decision. Knowing this, however, respondents' decided to remain silent with regard to petitioners' claims filed in March of 1996, thus invoking 26 CFR 301.7433-1(d)(2)(i) jurisdiction.

See Complaint @ appendix A.

49. On September 3, 1996, the 7th Circuit Court of Appeals in 95-3036, issued an order affirming the district court's final order in 95-2768, wherein petitioners were found to have failed exhaustion of their administrative remedies pursuant to 26 CFR 301.7433(d)(1). **See Order @ appendix A.**

50. This Court went on to say "the only potential evidence of exhaustion presented by LaRue is a document entitled "second codicil, with two attachments....they do not contain the necessary information to qualify as administrative claim under either... § 7433. See 26 CFR § 301.7433-1." LaRue v. Collector, 95-2768.

51. This Court also ruled in 95-2768 that the district court's order of May 8, 1995 and June 21, 1995 were correct because plaintiff[s] "must first exhaust hi[s] administrative remedies. 26 U.S.C. § 7433(d)(1). This exhaustion requirement is jurisdictional."

52. On September 26, 1996, petitioners instigated this action against the United States and named individuals, whom part of the time were employed by the United States and part of the time were within their private capacities, sued individually and officially, after having exhausted their administrative remedies pursuant to 26 CFR 301.7433-1. **See appendix A.**

53. On November 19, 1996, petitioners moved for default against individual respondents for failure to answer within time allotted in the district court federal rules.

54. On November 27, 1996, appellees qualified counsel herein, filed a convoluted motion which included six different types of moves; 1) Motion to Dismiss; 2) Motion for Injunction; 3) Suggestion of Sanctions; 4) Response to Default Request; 5) Request for other Relief; 6) Together with legal discussion on all points. At no time did the

Appellee request for plaintiffs' complaint to be dismissed on grounds plaintiffs' "case failed to state a claim upon which relief may be granted." District Court Order of January 14, 1997.

55. Within 14 days, petitioners filed a Motion to Strike Appellees' six-way motion for numerous reasons. The most important one was that it failed to say anything about the appellants claims therein now filed and exhausted. No request was made by the appellee to dismiss plaintiffs' claim for failure to state a claim to which relief can be granted. No request was made by the respondents to dismiss plaintiffs' case for failure to state a claim upon which relief can be granted as the district court stated within its order of January 14, 1997, 959 F.Supp. 957(CD ILL. 1997). This Court could not identify, on [a]ny one single page of the six-way motion, which liberally suggested such a move was requested. Respondents requested the district court attach their Motion to Dismiss filed in 95-3036 to which some appellants were not a party in 96-3270.

56. On September 8, 1997, the 7th Circuit ordered that "this successive appeal has been submitted to the original panel under operating procedures(6)(b)." Petitioners object to this Court's determination that petitioners' new case should be considered by the same panel under the successive rule procedure. This case is not successive and does not contain the same parties, the same evidence, the same jurisdiction and no comparable decision could be reached. There is no doubt some comparisons but none that warrant a successive appeal determination.

57. Now the district court and 7th Circuit refute their earlier findings and ignore facts that all petitioners satisfied administrative remedies prior to both the

President's amendment to section 7433 and also prior to the 7th Circuit Court's September 3, 1996, final order in 95-2768.

58. Quoting the 7th Circuit of its September 8, 1997 order, "In so far as plaintiffs are seeking damages (7433) that the government (defendants among others) violated their constitutional rights, the government has not waived its immunity with respect to such a suit." **See appendix A**, page 2 of September 8, 1997, appeal denial.

59. The district court and 7th Circuit Court of Appeals have no authority to deny petitioners' first amendment rights to redress their grievance against the Government. The 7th Circuit Court of Appeals refused to read petitioners' timely filed documents as demonstrated by their "denial" of petitioners' appeal and rehearing.

60. The district court, amidst petitioners' objections, continue to misconstrue petitioners as residents of Illinois. The Court continues to find that petitioners "concede that they are residents of Illinois." Why is the Court making such a big deal about whether or not the petitioners allege they are non-residents? This is an issue of fact which if any disputes should arise it should not be by the district court but by the parties opposing such allegations. Petitioners have never conceded this fact and are continuing there objection herein. Petitioners are either residents, non residents or Citizens. **See Complaint @ appendix A, parg. 2**

61. The Courts both keep asserting that petitioners concede they are residents of Illinois but the Courts will not identify the particular facts, attached to petitioners' Complaint which support such conclusion of fact. This conduct is evasive, arbitrary and capricious and clearly unconstitutional.

62. The district court rejected petitioners' claim of involuntary servitude because petitioners have not established they are slaves or otherwise subject to involuntary servitude. Petitioners' Complaint is consumed with allegations of involuntary servitude and slavery violations at paragraph 1,2,4,5,6,11,15,18,19,20,23,24.

63. The Court also decides "Plaintiffs never filed an administrative claim for a tax refund with the Internal Revenue Service so that the district court did not acquire jurisdiction over the claim for refund of federal income taxes." Petitioners never filed any "claim for refund of taxes" pursuant to 26 CFR 301.7422 on grounds petitioners were not seeking a 26 U.S.C. § 7422 refund of taxes. The statute is § 7433.

64. The President signed an amendment to the tax payer's bill of rights on July 30, 1996, which allowed actions for damage claims to be maintained even though administrative remedies were not exhausted. 26 U.S.C. § 7433(d)(1), as amended. This is an inherent waiver of sovereign immunity regardless of any claims being filed pursuant to § 7433.

65. The Court's statements regarding petitioners "seeking damages on the ground that the government violated their constitutional rights, the government has not waived its immunity with respect to such a suit." This decision alone is false and the Seventh Circuit Court is very aware of their fictitious conclusion.

66. Petitioners have not based their claims for damages on the grounds that as non-resident aliens they are not subject to tax. Petitioners based their claims for damages on grounds that "all U.S. obligations received by the Petitioners (Plaintiffs) are gross securities defined at 26 U.S.C. § 165(g) from sources without the United States. Petitioners' Compl. Pg. 3, prg. 1

67. In the 7th Circuit's order of September 8, 1997, the Court characterized petitioners' claims that they claimed "$"1,000,000 "Judgment Damages" plus economic damages of "$"20,000,000 per each claimants. Petitioners object to this "$" as not indicative of petitioners' claims. Petitioners do not know what "$" means. Petitioners requested One Million Dollars of value as Judgement Damages and Twenty Million Dollars of value as economic damages.

68. In regard to Sanctions, no one, including Clyde LaRue, received any advance notice that the 7th Circuit was considering the imposition of sanctions in 95-2768. Appellate record indicates that attempts to discharge such debt have not been accepted until after this appeal was instituted. The appellate record does not indicate that party Clyde W. LaRue has not paid prior sanctions imposed by this Court. No evidence exists in support of such finding. On the other hand, evidence does exist that Clyde W. LaRue has attempted to discharge such debt. No show cause motion was filed by the 7th Circuit notifying LaRue the Court was considering sanctions in 95-2768. This violates due process clause of the Fifth Amendment.

69. Petitioners, after being notified of the district court's posture with regard to the numerous motions struck by the Court between January 14, 1997 and March 20, 1997, because the district court could not make up its mind on how it wanted certain pleadings filed, filed a motion to consolidate the record for appeal involving the Order of January 14, 1997 with that of April 1, 1997. This was due to the Order noticing petitioners if they intend to appeal the sanctions, they must file a motion to consolidate. The record clearly shows the petitioners intent and this Court should investigate the issues within 96-C-3270.

SEPARATION OF POWERS

70. In 1965, the Supreme Court said:

"The Constitution divides the National Government into three branches-Legislative, Executive and Judicial. This separation of powers' was obviously not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a bulwark against tyranny. For if governmental power is fractionalized, if a given policy can be implemented only by a combination of legislative enactment, judicial application, and executive implementation, no man or group of men will be able to impose its unchecked will."

James Madison wrote:

'The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.'

The doctrine of separated powers is implemented by a number of constitutional provisions, some of which entrust certain jobs exclusively to certain branches, while others say that a given task is not to be performed by a given branch... Marbury v. Madison, 1 Cranch, 137.

Alexander Hamilton wrote:

'Nothing is more common than for a free people, in time of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves .... The name of liberty applied to such government, would be a mockery of common sense." United States v. Brown, 85 S.Ct. 1712-1713.

By banning bills of attainder, the Framers of the Constitution sought to guard against such dangers by limiting legislatures to the task of rule-making. Fletcher v. Peck, 6 Cranch 87, 136. Brown at 1713.

71. "The violation of the doctrine of separation of powers occurs when there is an assumption by one branch of powers that are central or essential to the operation of a coordinate branch, provided that the assumption disrupts the coordinate branch in the performance of its duties and is unnecessary to implement a legitimate policy of the government." I.N.S. v. Chadha 103 S.Ct. 2764.

72. The phrase "court of the United States" without more, means solely courts created by Congress under this article and not territorial courts. International Longshoremen's v. Warehousemen's Union, CIO, 1948, 170 F.2d 183, Cert denied at 69 S.Ct. 641, 936 and 1155. "But at most these other avenues of relief are speculative." I.N.S at 2777.

73. Since Julliard v. Greenman, S.Ct (110 U.S. 421), the Judicial Power involving Legal Tender placed Congressional Power under Article I, Section Eight, Clause Two, wherein this Court said:

> "The power to borrow money on the credit of the United States is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the **obligations of the United States** in any appropriate form, of stock, bonds, bills, or **NOTES**; and in whatever form they are issued, being instruments of the national government, they are exempt from taxation by the governments of the several States. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the government.
>
> So much is settled beyond doubt, and was asserted or distinctly admitted by the judges who dissented from the decision in the Legal Tender Cases, as well as by those who concurred in that decision. Veazie Bank v. Fenno, 8 Wall. 533, 548; Hepburn v. Griswold, 8 Wall. 616, 636; Legal Tender Cases, 12 Wall. 543, 544, 560, 582, 610, 613, 637.

It is equally well settled that Congress has the power....of issuing bills which, under ordinary circumstances, pass from hand to hand as money at their nominal value, and which, when so current, the law has always recognized as a good tender in payment of money debts, unless specifically objected to at the time of the tender."

74. In Chief Justice Marshall's words involving acts of Congress:

"Let the end be legitimate, let it be within the scope of the constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional." McCulloch v. Maryland, 4 Wheat, 421.

"Congress emitted bills of credit to a large amount, and did not, perhaps could not, make them a legal tender. This power resides in the states." Craig v. Missouri, 4 Pet. 410, 435

"If the words stand, they may suggest and lead to the emission." "The power, so far as it will be necessary to say, will be involved in that of borrowing." 5 Elliot, Deb. 434, 435, and note.

75. In United States v. South-Eastern Underwriters, 322 U.S. 533, the One Supreme Court said:

"Courts do not ordinarily give words used in the Constitution narrower meanings than they had in common parlance when the Constitution was written."

76. Although it seems on the surface that the issues herein raised appear to have been well adjudicated upon the merits, the petitioner points out that quite the opposite applies;

> "Defendant's demurrer, which admitted the facts well pleaded in the petition, did not admit allegations which amounted to conclusions of law in relation to the nature of the gold certificates or the legal effect of the legislation under which they were issued, held, or to be redeemed. Dillon v. Barnard, 21 Wall. 430, 437; United States v.Ames, S.Ct (99 U.S. 35), 45; Int.Land Co. V. Maxwell Land Co., S.Ct (139 U.S. 569, 577, 578); Eq. Life Ass. Society V. Brown, S.Ct (213 U.S. 25, 43)." Nortz v. United States, S.Ct.(294 U.S. 325).
>
> "Plaintiff explicitly states his concurrence in the Government's contention that the Congress has complete authority to regulate the currency system of the country, He does not deny that, in exercising that authority, the Congress had power 'to appropriate unto the Government outstanding gold bullion, gold coin and gold certificates.'
>
> Nor does he deny that the Congress had authority to compel all residents of this country to deliver unto the Government all gold bullion, gold coins and gold certificates in their possession.'" Knox v. Lee, 12 Wall. 457; Julliard v. Greenman, S.Ct (110 U.S. 421); Ling Su Fan v. U.S., S.Ct (218 U.S.302); Norman v. Balt. & Ohio R. Co., 55 S.Ct. 497.

77. On June 5th, 1933, Congress passed a Joint Resolution 48 Stat. 112, amending the Emergency Farm Mortgage Act of May 12, 1933, wherein it defined at section (b) that the term obligation means an obligation payable in money of the United States; and the term coin and currency means coin or currency of the United States, including Federal Reserve notes... This resolution provided also that "every obligation, heretofore, or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

78. The Supreme Court also stated that:

> "There is a well-known law of currency, that **notes or promises to pay**, unless made conveniently and promptly convertible into coin at the will of the holder, can never, except under unusual and abnormal conditions, be at par in circulation with coin. It is an equally well-known law, that depreciation of notes must increase with the increase of the quantity put in circulation and the diminution of confidence in the ability or disposition to **redeem**.
>
> Admitted then...assuming that the act is warranted by the Constitution, when depreciation reached its lowest point,to accept in payment a thousand **NOTE** dollars, although with the thousand coin dollars, due under the contract, he could have purchased on that day two thousand eight hundred and fifty such [note] dollars."

79. Due to the fact the United States will argue that all powers conferred to it are powers which involve money, and that issuing bills of credit are an exercise of [any] all powers, the Hepburn Court raised the question "Can this proposition be maintained[?]." The Court answered the question in the negative that:

> "the admission of a legislative power to determine finally what powers have the described relation as means to the execution absolutely and without liability to question, in cases involving private rights, the powers thus determined to have the relation, would completely change the nature of American government. It would covert the government, which the people ordained as a government of limited powers, into a government of unlimited powers. It would confuse the boundaries which separate the executive and judicial from the legislative authority. It would obliterate every criterion which this court, speaking through the venerated Chief Justice in the case already cited, establish for the determination of the question whether legislative acts are constitutional or unconstitutional.
>
> Now, then, let it be considered what has actually been done in the provisions of a National Currency." Hepburn v.Griswold 8 Wall at 618.

80. The question thus arises: "what is lawful money of account of the United States and what is the dollar quantity thereof[?]."

First, all Federal Reserve notes are issued pursuant to the Sixty-Third Congress. Sess. II Ch. 6, where by Congress, allegedly among means appropriate, plainly adapted, really calculated, as the legislature exercising an unrestricted choice (quoting Hepburn). Included within its choice, Section 16 of the act of December 23, 1913, H.R. 7837, Public Number 43.

81. This Section purported that "Federal Reserve notes ... issued ... for purpose of making advances...and for no other purpose are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in gold on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or in gold or lawful money at any Federal reserve bank."

82. Section 16 was later amended by the Seventy-Third Congress. Sess. II. Ch. 6, H.R. 6976, Public Number 87, whereby the third sentence of the original first paragraph is amended to read as follows: "They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank. This section remains unamended and in full force.

83. The question thus arises: "are all Federal Reserve notes in circulation issues which conform upon their face to Section 16 of the act of December 23, 1913 as amended[?]." This question requires another question to be addressed first. "Are all Federal Reserve notes, issued pursuant to Section 16 of the act of December 23, 1913, as amended, redeemable in lawful money at any Federal Reserve bank or at the Treasury Department.

84. This question requires yet the answer to another question which is: "what is lawful money of the United States as defined and intended by the spirit of the Constitution[?]." This question demands yet a final answer to a question: "what is money enumerated in the Constitution."

85. This Court answered the question of what is Money by saying:

> "There is nothing in the terms of the act which looks to any difference in its operation on different descriptions of debts payable generally in money-that is to say in dollars and parts of dollars. Hepburn, at 609

86. The Act of April 2, 1792, Second-Congress, Sess. I, Ch. 16, Section 9 provides the answer to the question of defining the substance of a "dollar."

> "Dollar or Units-each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of grain of pure, or four hundred and eighty-five grains of standard silver.

87. In 31 U.S.C. § 5101, pursuant to Public Law 97-258, Congress found that "United States Money is expressed in dollars, dimes or tenths, cents or hundredths, and mills of thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar."

88. United States Money is then a mill of a dollar. A mill is then one-tenth of a cent. Conclusively, United States Money is today measured in mills or mills of cents.

At no time did Congress express that United States Money is expressed in Federal Reserve notes anywhere in any statute or opinion.

89. The answer to the question: "What is Money as defined and intended by the spirit of the Constitution" is **coin** as measured and struck in fractions of dollars measured by cents as defined by the current Coinage Act of April 2, 1792 in section 9, where it states that "Cents-each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper," and is devisable in fractions of a dollar or in 1-cent, 5-cents, 10-cents, 25 cents, 50 cents, 100 cents equals one dollar.

90. The answer to the question: "what is lawful Money of the United States" or in other word what is legally warranted by the Constitutions enumeration to be Money and the answer is Coin measured by certain parity which equals fineness and weight.

91. The answer to the question: do all Federal Reserve notes issued pursuant to section 16 of the Federal Reserve Act of 1913, as amended, require redemption in lawful money at any Federal Reserve Bank. The answer Yes. Each note being redeemable dollar for note would mean that in order for each Federal Reserve note to be "Legal Tender" all Federal Reserve notes must be secured by dollars, claimable on demand and as defined in the Coinage Act of April 2, 1792, as amended.

92. The evidence of the money borrowed is the note or security issued and thus the note or security could never become that which it purports to secure or borrow. 12 U.S.C. § 411, as amended, provides that the substance of a Federal Reserve note is required to be "lawful money." A defining character of said note is its to be redeemed on demand in lawful money at any Federal Reserve bank or the Department of Treasury.

93. Congress was expressly enumerated with power to punish any person[s] who "issues counterfeit securities or current coin of the United States," at Art. I, § 8, Cl. 6. This shows intent are founding fathers never intended for any Thing but Dollars representing a parity of Gold or Silver content, or at the very least some metal coin of distinguishable character, fineness and weight, as defined above, to be circulating as securities or currency allegedly redeemable in lawful money when no such security exist by, of or in U.S.

94. Demanding return of what petitioners' labor exchanged for, when the exchange was in form of unredeemable Federal Reserve notes as U.S. obligations, is violative of petitioners' 4th, 5th, 9th 10th and 13th amendment rights, among others.

95. Each State in the Union, including Illinois, is prohibited from tendering any Thing but Gold and Silver coin as a legal tender in payment of money debt. Article I, Section 10, Clause 1. Since Federal Reserve notes are unredeemable, and that said Union State, Illinois, relies upon collection of said notes to pay their debts, the Supreme Court's decisions in the **Gold** cases attempts to nullify the prohibitions against Union States in violatic to any power conferred to the United States, whatsoever, mandating violations of the specific prohibitions involving that of money, namely, Article I, § 8, Clause, 1,2,3,4,5,6,18, and in § 9, Clause 3,7, and in § 10, Clauses 1. This also clearly establishes intentional violations to the 10th amendment.

96. When lower courts fail to consider certain intent of Federal Reserve notes issuing statute, namely which requires the note to be redeemed in lawful money, no relief is available to petitioners for redress.

INVOLUNTARY SERVITUDE

97. Petitioners are being held against their will to enforced compulsory service to the United States by way of the Internal Revenue Service employees reckless and intentional disregard in application of the Internal Revenue Laws. Petitioners have well documented their intent and the terms of their involvement in the 10th amendment. As the 10th Circuit Court stated in Porth v. Brodrick, 214 F.2d 825, "if the tax laws were classified as a kind of servitude, they would not be the same kind of involuntary servitude as contemplated within the 13th amendment." Since the tax laws would not be the same kind of involuntary servitude as contemplated in the 13th amendment, the tax laws must be of a voluntary servitude in their nature. In Hodges v. United States, 203 U.S. 1, 17, the One Supreme Court stated that "servitude is by the same authority declared to be 'the state of voluntary or compulsory subjection to a master.'"

98. Petitioners alleged defendants individually named in their 26 U.S.C. § 7433 damage action were agents of a foreign principal and not agents of the United States Government.

99. The United States has developed an elaborate scheme whereby pursuant to the Power to Borrow Money on the Credit of the United States, it has, in furtherance of aid to its Power to Coin Money, regulate the value thereof and fixing the standard of weights and measures under the necessary and proper rule of Article One, Section Eight, Clause Eighteen of the Constitution, results of which produced the appearance that Federal Reserve notes, which printed upon those instruments is the word "Dollar", are somehow U.S. Dollars, thus considered Money as defined throughout the spirit and intent of

those limited enumerated powers of Section Eight of the First Article and all other usages of the term "Money" therein and are incorrectly imposed equity claims of tax upon petitioners' rights to exist for no legitimate exercise of any powers enumerated.

10th AMENDMENT ARGUMENT AMONG THE SEVERAL STATES AND THE 16TH AMENDMENT

100. The phrase "among the several States" included in the direct language of the 16th amendment means "interstate" as it has always been defined prior to and ever since same.

101. In United States v. Lopez, 115 S.Ct 1624 (1995) the Supreme Court struck down and invalidated the Gun Free School Zones Act, 18 U.S.C. § 922(q).

102. This One Supreme Court, in an opinion by Chief Justice Renquist, held that the Gun Free School Zone Act, making it a federal offence for any individual to knowingly possess firearms at a place that the individual knows or has reasonable cause to believe is a school zone, exceeded Congress' Commerce Clause authority since possession of a gun in a local school zone was not an economic activity that substantially affected interstate commerce.

103. In its opinion, the Supreme Court divided permissible Commerce Clause regulation into three categories:

1. "the use of the channels of interstate commerce;"
2. "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activity"

3. "those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce."

104. The Court concluded that section 922 (q), classified in the third category, failed to substantially affect interstate commerce. Lopez, @ 1629-1630.

105. As the 16th amendment contains no jurisdictional nexus element which would ensure through a case-by-case inquiry that the action in question affects 16th amendment power enumerated, then the Court must ask whether the amendment's constitutionality, or the constitutionality of its application in a particular case, is supported by the findings in the legislative history of the amendment, the litigants' proffered challenge to the constitutionality of the amendment, or by the Court's own attribution of congressional purpose to the amendment.

106. The 16th amendment's congressional findings contain no logical stopping point that could serve as a surrogate for the missing jurisdictional nexus requirement. Regulating activity of petitioners is in no sense necessary to regulate the Internal Revenue Laws. The 16th amendment through the phrase "among the several States" would thus be converted into a general police power.

107. The District Court refused to consider facts relating to Congressional authority involving income tax derived from sources "among the several States." The phrase "among the several States" adopted in the language of the 16th amendment as taken either from Article I, § 2, Cl. 3 or Article I, § 8 has unanimously been determined to mean "**interstate**" by this One Supreme Court and which statistically, has no effect upon other Union States, wholly intrastate, directly or indirectly.

108. The 10th Amendment of the Constitution created by the States of the Union limits the power of the United States to it specific designations. See New York v. United States, 505, __ - __ (1992) (slip at 7) "No one disputes the proposition that the Constitution created a Federal Government of limited powers." (Gregory v. Ashcroft, 501 U.S. 452, 457 (1991); Maryland v. Wirtz, 392 U.S. 183, 196(1968); NLRB v. Jones, 301 U.S. 1, 37 (1937); Cf. Chisolm v. Georgia, 2 Dall, 419, 435 (1793) (Iredell, J.) "Each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them." The powers accorded Congress are enumerated specifically at Article I, Section 8, cl. 1-18 and 1, § 9.

109. The Court took great pains to make clear that Congress could not regulate commerce "which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States." Gibbons v. Ogden, 9 Wheat 1, at 194-196. But even if one were to adopt the reading that the "affects" language, at most, permits Congress to regulate only intrastate commerce that substantially affect interstate and foreign Commerce the limitation is self evident. This determination arrived due to the direct language of the Commerce Clause at Article I, § 8, Cl. 3 which is the limitation phrase "among the several States."

> "Congress shall have the power to lay and collect taxes...(lden. 3) to regulate Commerce with foreign nations, among the several States, and with the Indian Tribes."(Art. 1, § 8, Cl. 3).

110. Although the distinction between what is commerce among the several States and what is income derived from sources among the several States appears to be different in subject matter, "Comprehensive as the word 'among' is it may very properly be restricted to that commerce which concerns more State than one...The enumeration presupposes something not enumerated and that something, if we regard the language or the subject of the sentence must be the exclusive commerce of a State." (Gibbons Court, Id. 194-196). As in the instant case the issue is whether or not Congress enacted statutes which compel the return, by filing of a 1040 U.S. Interstate Individual Income Tax Return, of a portion of the U.S. obligations received, when no evidence indicates any notes were received among the several States.

111. In this sense, if we regard the language or the subject of the sentence, involving the 16th amendment, the 16th amendment involves the exclusive receipt of money concerning more States than one, not receipt of U.S. obligations.

112. The phrase "among the several States" as appearing in the Constitution enumerated by States of the Union means "interstate". Seemingly, no judicial determination is available on this issue beyond the **Lopez** analysis.

113. The "16th amendment declares that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. It was not the purpose or effect of the Amendment to bring any new subjects within the taxing power. In determining what constitutes income substance rather than form is to be given controlling weight." Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926).

114. The phrase "among the several States" specifically limits the Jurisdiction for the 16th Amendment to interstate income where people are concerned.

115. The " 16th amendment added no new taxing power to Congress" Brushaber 240 U.S.1

116. The 7th Circuit made so many errors in reviewing the facts of petitioners' appeal, or refused to review the facts, or had someone not authorized to review the facts then review the facts and omit in their report certain key facts in petitioners' appeal, that petitioners' rights to appeal the decision of the district court was abridged arbitrarily without explanation, and without the 7th Circuit reviewing all the issues presented involving the effect phrase "among the several States" has upon 16th amendment jurisdictional authority.

7433 DAMAGE CLAIMS

117. Petitioners maintain that damage claims pursuant to 26 U.S.C. § 7433 can be maintained against individual agents of the Internal Revenue Service for their reckless and intentional disregard for the internal revenue laws. Bivens claims against these respondents is not appropriate because Congress has enacted a remedial mechanism which allows petitioners to redress against the United States for their employee's conduct.

118. Allowing the District Court's judgment to stand has the absurd affect that all Internal Revenue Service employees whom act reckless and intentional with disregard for the law are somehow elevated above the law. If the President is not above the Law, see Jones v. Clinton, then neither are these individually named defendants.

119. Petitioners believe that Internal Revenue Service employees are not entitled to qualified immunity as "agents" of the United States Government are concerned. Petitioners believe term agent, as other terms are abused is being stretched beyond presupposition.

TAXING WITHOUT APPORTIONMENT

120. The effect of the Courts' determination that Congress may impose its taxing will upon people of each Union State directly, and without regard to anything, whatsoever, is tyranny against the Union. Petitioners refuse to subscribe to the Courts' determinations. When the 16th amendment removed the rule of apportionment, it did not remove the 10th amendment. Congress has no power enumerated to impose a liability upon Union State Citizens for the mere right to exist. Taxing among the several States and taxing among the several people are two different directives. One being endorsed by the Constitution and the other strictly forbidden.

121. The Internal Revenue Laws, if found by the One Supreme Court to endorse legislation affecting Union State Citizens, are undeniably unconstitutional.

122. Petitioners had right to revoke any mistake in law they may have made and the United States has the duty to accept such revocation or explain in writing why such revocation is not accepted.

CONCLUSION

The petitioners request One Supreme Court hear oral argument on this and other cases involving all issues raised herein.

Therefore, the petition for Writ of Certiorari should issue.

Date: March 26, 1998 **RESPECTFULLY SUBMITTED**

Supreme Court, U.S.
FILED

971605 MAR 26 1998

OFFICE OF THE CLERK

(2)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Clyde W. LaRue, et al.,

Petitioners,

v.

United States of America, its Collectors of Internal Revenue Tax, John Wendorff, et al.,

Respondents.

Appendix A

ON WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Clyde W. LaRue, et al.,
2745 S. 6th, # 105
Springfield, Illinois 62703
217-652-2555/217-529-1573

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

v. Case No. 95-2768

Collector of Internal Revenue

O R D E R

Clyde LaRue brought this action in the district court seeking the return of all income taxes that he has ever paid to the United States government. LaRue contends that he should be treated as a nonresident alien because he is a resident of his home state, Illinois, and not a resident of the United States. The district court dismissed the suit, and LaRue appeals.

LaRue's argument that he should be treated as a nonresident alien -- one that is offered occasionally by tax protesters -- is patently frivolous. See United States v. Hilgeford, 7 F.3d 1340, 1342(7th Cir. 1993); United States v. Sloan, 939 F.2d 499, 500-01(7th Cir. 1991), Cert denied, 502 U.S. 1060 (1992). Moreover, the district court had no jurisdiction to entertain his lawsuit. LaRue brought his claim under 26 U.S.C. § 7433(a), which allows taxpayers to seek damages against federal officers who recklessly or intentionally disregard the tax code when collecting taxes. Before a plaintiff may bring suit under § 7433, he must first exhaust his administrative remedies. 26 U.S.C. § 7433(d)(1). This exhaustion requirement is jurisdictional. Venen v. United States, 38 F.3d 100, 103 (3d Cir. 1994); Conforte v. United States, 979 F.2d 1375, 1377 (9th Cir. 1992).

The district court noted that because

LaRue was seeking a refund of his taxes, his suit should perhaps be construed as one under 26 U.S.C. § 7422 (the tax refund statute) rather than § 7433. The tax refund statute contains an exhaustion requirement as well: 26 U.S.C. § 7422(a) specifies that no taxpayer may file suit under the section without first making an administrative request for a refund. As is the case with § 7433, the exhaustion requirement of § 7422(a) is jurisdictional. See Commissioner of Internal Revenue v. Lundy, 116 S. Ct. 647, 651 (1996); Goulding v. United States, 929 F.2d 329, 332 (7th Cir. 1991), cert denied, 506 U.S. 865(1992).

The only potential evidence of exhaustion presented by LaRue is a document entitled "Second Codicil,: with two attachments: an affidavit, and a document titled "Constructive Notice of Nontaxpayers." See plaintiffs exhibit A. Even if LaRue sent these documents to the IRS, they do not contain the necessary information to qualify as an administrative claim under either § 7422 or § 7433. See 26 CFR § 301.6402; 26 CFR 301. 6402-3; 26 CFR 301.7433-1. Thus, LaRue failed to exhaust his administrative remedies, and the district court lacked jurisdiction over his lawsuit.

In addition to challenging the merits of the district court's decision, LaRue argues that we should remand the case because the district court failed to rule on a motion filed by the plaintiffs on May 22, 1995. The May 22 motion was a response to the district court's order of May 8, 1995, which directed the plaintiffs to show cause why Rule 11 sanctions should not be imposed for pursuing a frivolous action. The district court considered the plaintiffs' response and, on June 21, 1995, issued an order imposing sanctions. Thus, LaRue's claim that the district court failed to consider the May 22

motion is groundless.

Finally, the government filed a motion requesting sanctions against LaRue for bringing a frivolous appeal. See Fed. R.App.P. 38. The motion was filed in a separate notice, as required by Rule 38. LaRue filed a response requesting sanctions against the government. rule 38 sanctions are appropriate if an appeal is brought with no reasonable expectation of success and for the purpose of "delay, harassment or sheer obstinacy." A-Abart Electric Supply, Inc. v. Emerson Electric Co. 956 F.2d 1399, 1407 (7th Cir.) cert denied, 505 U.S. 867 (1992). LaRue brought this action without first exhausting his administrative remedies, in clear violation of §§ 7422 and 7433, and his argument that he is not subject to the tax laws of the United States is patently frivolous. His appeal raises no good faith argument that the district court erred in dismissing his case. Thus, it appears to us that sanctions against LaRue are appropriate. The district court's judgment dismissing LaRue's suit is AFFIRMED. LaRue's motion for sanctions against the government is DENIED. Pursuant to Rule 38, LaRue is ordered to pay $ 1,500.00 to the appellee, the United States of America, for bringing a frivolous appeal.

Decided September 3, 1996

Signed: Walter J. Cummings, Circuit Judge
Wilbur F Pell, Jr., Circuit Judge
Joel M. Flaum, Circuit Judge

COMPLAINT

JURISDICTION

This is a Civil Claim for Damage action for certain unauthorized collection actions by the United States, et al., as well as those named and unnamed individuals within and without their official capacity employed and hidden by United States, et al. The 16th amendment to the United States Constitution in no way authorizes revocation of the 13th amendment, whatsoever.

This court has jurisdiction pursuant to 28 U.S.C, section 1340, 26 U.S.C. section 7433. Treasury Claims pursuant to 26 CFR 301.7433 have been duly filed by all Plaintiffs. No administrative remedy exists within any other statute for purposes of this action except at 26 U.S.C. 7433. No decision was presented by the Defendants in opposition to said Claims, whatsoever. The Sovereign Immunity of the United States is officially waived pursuant to the Defendants' decision to remain silent for a period of six months as specified at 26 CFR 301.7433-1(d)ii and therefore judgement is assured.

THE PARTIES

1. For purpose of the Federal Income Tax, Plaintiffs Clyde W. LaRue, et al., are members of a class of people (U.S. Citizens, Residents Aliens, and/or Non-resident Aliens) who at no time during the taxable year are engaged in a trade or business within the United States, and are so defined at 26 CFR 1.871-1(b)(i). All U.S obligations received by the Petitioners are gross securities defined at 26 U.S.C. 165(g) from sources without the U.S.

2. On information and belief, Defendants United States, et al., are acting as agents of a foreign principal and not agents of the United States Government. The Defendant United States has employed and or devised schemes (hereinafter referred to as scheme) which purports to compel the voluntary compliance of the Plaintiffs with respect to the 16th amendment to the United States Constitution [codified at 26 U.S.C]. Said scheme purports to be successful upon the United States receiving a 1040 U.S. Individual Income Tax Return from the Plaintiffs which by label "elects" the Plaintiffs to be treated as subjects of the Internal Revenue tax.

3. On information and belief, Defendants named individually are in part, acting as Officers, Agents, Special Agents, or Employees of the United States Government in concert with others for the purpose of compelling the "scheme" implemented as their belief as to what the United States laws require. Fraud, coercion, fear and extortion are instruments of deception used by these Defendants for the purpose of compelling their "scheme".

4. On information and belief, Defendants individually are acting in part, outside their official capacity for the purpose of compelling their "scheme" and as such are personally liable for their conduct to the Plaintiffs. The Plaintiffs are unaware of any Law which would authorize acts against the free will of the Plaintiffs due to the substantial effect of the 13th amendment.

5. On information and belief, the 13th amendment is conclusive and remains without exception. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all beneficiaries to the 13th amendment. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all potential targets of the "voluntary compliance scheme".

NATURE OF CLAIM

6. Plaintiffs bring this action pursuant to 26 CFR 1.6013.6(b) and 1.871-10(d), thereby "electing" to revoke all 1040 Form elections to be treated as "residents" of the United States and to "treat real property income as effectively connected within the United States". Plaintiffs' claim for damages arose from fraud, coercion, and fear of the Defendants, thereby creating a mistake of law on the part of the Plaintiffs (See Exhibit A). The Defendants by supposed Sovereignty, have confined the Plaintiffs into **INVOLUNTARY SERVITUDE** in violation to the Thirteenth Amendment to the United States Constitution.

7. The amount of Judgement Damage award claimed is One Million Dollars of value and the direct economic damages sought is Twenty Million Dollars of value per each Claimant. The Defendants remain without opposition to Plaintiffs' Treasury Claims, thus the United States agrees for judgment in favor of Plaintiffs. (26 U.S.C. 7433(b). Exhaustion of all Administrative Remedies (26 U.S.C. 7433(d)1) has occurred, consent to suit exists within said record, and thus the United States sovereign immunity is waived pursuant to this action.

8. On May 8, 1995 in LaRue, et al., v. United States of America, 95-3036 (7th Cir. 95-2768, 96-1827, **AFFIRMED September 3, 1996**) this Court Ordered LaRue, supra, dismissed for Lack of **Subject Matter Jurisdiction, and for Failure to State a Claim for which relief can be Granted** (Fed. R. 12(b)1 and 12(b)6).

9. In LaRue, Supra, the Court relied upon the Defence of the United States which showed Plaintiffs' failure to file Treasury Claims as a means to which LaRue, supra ought be dismissed. The Court found consent to this action did not exist. The Court found no evidence of any waiver of the United States sovereign immunity.

10. The Court, in LaRue, supra, found that Treasury Claims pursuant to 26 CFR 301.7433 would allow the court proper Subject Matter Jurisdiction, and thus all Claims for relief should be granted. On September 3, 1996, the 7th Circuit Court AFFIRMED this Court's decision. This action was dismissed **without prejudice.**

BACKGROUND

11. In 1865, the 13th Amendment was adopted to the United States Constitution, signed and authorized by the President of the United States at that time, Abe Lincoln. The 13th amendment states:

> "Neither slavery nor involuntary servitude...shall exist in the United States or any place subject to their jurisdiction..."

12. On information and belief, Congress has jurisdiction over all things subject to their jurisdiction.

13. On information and belief, Congress passed the Corporation Income Tax Act of 1909. This act is thus subject to the Jurisdiction of the United States.

14. On February 25, 1913, Philander C. Knox, Secretary of State of the United States of America, published in the PRIVATE LAW of the UNITED STATES OF AMERICA by the SIXTY-SECOND CONGRESS, 1911-1913, on page 1785, his proclamation that the Sixteenth (16th) Amendment had been ratified by the states, thereby authorizing Congress to tax income under the Corporation Income Tax Act of 1909 on Federal Corporations (Subjects of Congress).

15. On information and belief, the Supreme Court of the United States ruled that: "This Amendment does not extend the taxing power to new subjects, ----". BRUSHABER v. UNION PACIFIC R. CO., 240 U.S. 1, 60 L.ed 493, 36 S. Ct. 236; STANTON v. BALTIC MINING CO., 240 U.S. 103, 60 L. ed 546, 36 S.Ct 278. The term "taxpayer" is defined at 26 USC[1988] 7701(a)(14) as any person **subject** to the Internal Revenue tax.

16. On information and belief, Congress passed 26 U.S.C. section 6013(a)(1) which states that "no joint return shall be made if either the husband or the wife at any time during the taxable year is a nonresident alien;".

17. On information and belief, Congress also made provision at 26 U.S.C. sec. 6013(g)(h) for a nonresident alien to "elect" to be treated as a resident of the United States (subject to Congress). Thus, the voluntary nature of the Federal Income Tax comes into play.

18. On information and belief, Plaintiffs are unaware of any constitutional authority for Congress or any part of the federal government to make any adhesion contract that would take away the sovereignty of the people or states of the Union. Therefore, the Defendant's reliance upon writing and/or making of "word-of-art" definitions in statutes and/or regulations that entrap the sovereigns is clearly unconstitutional. Methods promoted by Congress that seek the voluntary election of a People in procuring subject status with the United States [**26 U.S.C. 7701(A)(14) "taxpayer defined"; "the term taxpayer means any person subject to the Internal Revenue tax"**], should and is clearly only held by the United States at the discretion and meaning of the term voluntary subjection (**servitude**). Once "taxpayers" elect to revoke said voluntary election (servitude), said People are no longer considered subjects to the Internal Revenue tax by **LAW**.

19. On information and belief, the Secretary also made provision, at 26 CFR 1.6013-6(b) for "An election under this section shall terminate if either spouse revokes the election"; and 1.871-10(d)(1) or (2) whereby a decision to revoke an "election" may be made with or without the consent of the Commissioner. Construction of the Statutes otherwise establishes **Congressional Acts of INVOLUNTARY SERVITUDE [Slavery] in direct violation to the 13th amendment.**

20. On information and belief, based upon the complexities of the tax Laws, Plaintiffs are unaware of any statutes, rules, or regulations which would compel the "voluntary compliance scheme"

employed by the plaintiffs to file any U.S. Individual Income Tax Returns. The United States enjoins such schemes in an attempt to further coerce Plaintiffs (People) into "voluntary servitude".

21. Servitude and subjection have synonymous meanings.

COUNT I

22. On information and belief, the Defendants have recklessly and intentionally disregarded the provisions of title 26 section 6013(g)(h), 871(d) and the regulations promulgated thereunder and have refused, by fraud, coercion, fear to allow the Plaintiffs their rights to revoke the original Forms 1040 "elections" for all tax years ab initio, pursuant to 26 CFR 1.6013-6(b) and 1.871-10(d)(1), which were obtained by the Defendants involving purported acts of a voluntary nature (SEE 2nd Codicil attached within Exhibit A.

23. The actions of the Defendants have been reckless and intentional, with no statute or regulation authority, and have caused and are causing the Plaintiffs to suffer Slavery, and much financial damage.

COUNT II

24. The Defendants, have in part, within their official capacities and in part without official capacities, consciously, knowingly and willingly placed each Plaintiff herein under involuntary subjection to the 16th amendment, in violation of the 13th amendment to the Constitution for the United States of America.

CONCLUSION

Wherefore, Plaintiffs Clyde W. LaRue, et al, request that this court enter judgement in its favor and against the Defendants and hereby claim actual, direct economic damages as a proximate result of the reckless and/or intentional actions of the Defendants, pursuant to exhaustion of all administrative remedy pursuant to 26 U.S.C. § 7433(d)1. Judgement according to Treasury Claims 26 CFR 301.7433 is justifiably adequate.

SEE SIGNATURE PAGE LIST ATTACHED

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

Clyde W. LaRue, et al.,
Filed January 14, 1997

v. No. 96-3270

United States of America, et al.,

ORDER

Richard Mills, District Judge:

This cause is before the Court on Defendants' Motion to Dismiss.

On November 29, 1996, the United States, acting on behalf of the Defendants, filed a motion to dismiss this case for failure to state a claim upon which relief may be granted. Plaintiff have filed no response to that motion.

As the Court noted in an earlier order, this is the second tax protest lawsuit Clyde W. LaRue and his colleagues have filed in this Court within two years. The Court dismissed the first lawsuit as frivolous and imposed sanctions on the Plaintiffs under Federal Rules of Civil Procedures 11. Clyde W. LaRue appealed and the United States Court of Appeals sanctioned him for filing a frivolous appeal.

Plaintiffs make essentially the same claims in this lawsuit as they did in the lawsuit they filed in 1995. Specifically, Plaintiffs claim that they are exempt from federal income tax because the State of Illinois is not a "state" as defined by Congress in the Internal Revenue Code.

Rather, they argue that Illinois is a member of the "union." Thus, according to their convoluted reasoning, since Illinois is not a state for federal income tax purposes, then they are "non-resident aliens" and exempt from federal income taxes. In a new twist, Plaintiffs also claim that they are the victims of involuntary servitude imposed in violation of the Thirteenth Amendment to the United States Constitution.

Plaintiffs argue that they are exempt from federal income tax because they are non-resident aliens. Yet they concede that they are residents of the state of Illinois. Thus, Plaintiffs' claim to be non-resident aliens is absurd on its face and warrants no further discussion. See e.g. United States v. Hilgeford, 7 F.3d 1340, 1342 (7th Cir. 1993) ("The defendant in this case apparently holds a sincere belief that he is a citizen of the mythical 'Indiana State Republic' and for that reason is an alien beyond the jurisdictional reach of the federal courts. This belief is of course, incorrect."); United States v. Sloan 939 F2d 499, 500 (7th Cir. 1991) (Plaintiff contends "that he is not a citizen of the United States, but rather, that he is a freeborn, natural individual, a citizen of the State of Indiana...This strange argument has been previously rejected as well.") Lovell v. United States, 755 f.2d. 517, 519 (7th Cir. 1984)

Plaintiffs' claim of involuntary servitude is likewise absurd on its face. The Thirteenth Amendment to the United States Constitution provides that "[n]either slavery nor involuntary servitude shall exist within the United

States. Plaintiffs offer nothing in their Complaint, and offer no response to Defendants' Motion to Dismiss, from which they might establish that they are slaves or otherwise subject to involuntary servitude. Taxes are not a symbol of involuntary servitude. After all, "[t]axes are what we pay for civilized society..." Companis General de Tabacos de Fillipinas v. Collector of Internal Revenue, 275 U.S. 87, 100 (1927) (Holmes J., dissenting). The hallmark of civilized society (for which taxes are paid) is freedom, the antithesis of slavery.

The Court finds that Plaintiffs' claims are without any basis in law and must, therefore, be dismissed. Plaintiffs' Complaint is fraught with procedural and jurisdictional deficiencies (some of which the Court noted in its Order of December 9, 1996) but the Court will not waste its time discussing procedure when, at its core, this a meritless tax protest action.

As in LaRue v. Collector of Internal Revenue, No. 95-3036 (C.D. Ill., filed Feb.2, 1995), the Court is inclined to impose sanctions upon Plaintiffs under Federal Rule of Civil Procedures 11. As instructed below, Plaintiffs shall show cause, if any exists, why they should not be sanctioned pursuant to Federal Rules of Civil Procedures 11(b)(2) and 11(b)(3) for filing a frivolous complaint.

Ergo, The United States' Motion to Dismiss (d/e 32) is Allowed. This cause is DISMISSED with prejudice; Plaintiffs are to bear all costs of this action.

Plaintiffs' motion to strike and for summary judgment (d/e 35 and d/e 36 are DENIED as MOOT.

Plaintiffs are ordered to show cause

in writing by January 30, 1997 why they should not be sanctioned pursuant to Federal Rules of Civil Procedures 11.

Entered January 7, 1997, for the Court.

Signed Richard Mills

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al March 28, 1997

No. 97-1635 v.

United States of America, et al.,

O R D E R

A preliminary review of the short record indicates that the order appealed form may not be a final appealable judgement within the meaning of 28 U.S.C. § 1291.

A notice of appeal filed before the district court issues its ruling on a timely Rule 59 Motion is ineffective until the order disposing of the motion is entered on the district court's civil docket. Fed.R.App. P. 4(a)(4)

In the present case, one of the plaintiffs filed a motion for relief from judgment on January 29, 1997. this may be a timely Rule 59 motion. See Charles v. Daley, 799 F.2d 343, 347(7th Cir. 1986). As such, this appeal may be premature, because it appears that the district court has not disposed of the motion and entered its order on the district court's civil docket. Accordingly,

IT IS ORDERED that appellants shall file, on or before April 8, 1997, a brief memorandum stating why this appeal should not be STAYED pending the entry of the order disposing of the motion. A motion for voluntary dismissal pursuant to Fed.R.App.P. 42(b) will satisfy this requirement. Briefing shall be suspended pending further court order.

NOT SIGNED BY ANY CIRCUIT JUDGES

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. May 27, 1997

United States of America

Upon consideration of : #1) JURISDICTIONAL MEMORANDUM, filed on April 15, 1997, by Appellant Clyde LaRue, in which the appellant indicates that their post-judgment motion has been denied,

IT IS ORDERED that briefing will proceed as follows:

1. The brief and required short appendix of the appellants are due June 23, 1997.

2. The brief of the appellees is due July 23, 1997.

3. The reply brief of the appellants, if any, are due August 6, 1997.

If appellants appeal from the denial of the post-judgement motion, they shall promptly file a motion to consolidate the appeals.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. September 8, 1997

United States of America, et al.,

ORDER

On September 3, 1996, we handed down an order disposing of plaintiff Clyde W. LaRue's first action seeking the return of all income taxes that he had paid to the United States. He contended that he should be considered a non-resident alien because he is a resident of Illinois rather than of the United States. In our order we held that plaintiff's argument was patently frivolous and ordered him to pay $ 1500.00 to the United States for bringing a frivolous appeal. Twenty three days later LaRue and 28 other individuals filed another complaint against the United States and others claiming that defendants recklessly and intentionally disregarded the various provisions of the code of federal regulations and regulations promulgated thereunder and "have refused by fraud, coercion, and fear to allow the Plaintiffs their right to revoke the original Forms 1040 'elections' for all tax years ab initio" and have placed the plaintiffs under involuntary subjection to the Sixteenth Amendment, in violation of the Thirteenth Amendment. Plaintiffs claimed$ 1,000,000.00 "judgment damages" plus economic damages of $ 20,000,000.00 per each of the 29 claimants.

On January 14, 1997, the district judge handed down an order granting the government's motion to dismiss with prejudice and ordering plaintiffs to show cause why they should not be sanctioned. Plaintiffs were claiming that they are "non-resident aliens" exempt from federal income taxes because Illinois is not a "state" as defined in the Internal Revenue Code but rather is a member of the "Union." Plaintiffs also were asserting that they are victims of involuntary servitude in violations of the Thirteenth Amendment. As the district judge pointed out, plaintiffs assertion that they are non resident aliens is absurd because they concede they are residents of Illinois. See United States v. Higeford, 7 F3d. 1340, 1342 (7th Cir. 1993); United States v. Sloan, 939 F.2d 499, 500-01 (7th Cir. 1991); cert. denied, 502 U.S. 1060 (1992); Lovell v. United States, 755 F.2d. 517, 519 (7th Cir. 1984)

The district judge also rejected plaintiffs' claim of involuntary servitude because plaintiffs have not established they are slaves or otherwise subject to involuntary servitude.

Therefore, the district court granted the government's motion to dismiss with prejudice and ordered plaintiffs to show cause why they should not be sanctioned. On March 17, 1997, plaintiffs filed a notice of appeal from the January 14, 1997, judgment.

The district court judgment dismissing this case and sanctioning LaRue should be affirmed. Plaintiff Clyde LaRue is dismissed from this appeal because he failed to pay $ 1500 in sanctions that we imposed upon him in our September 3, 1996, order.

Plaintiffs never filed an administrative claim for a tax refund with the Internal Revenue Service so that the district court did not acquire jurisdiction over their claim for a refund of federal income taxes. See Section 7422(a) of the Internal Revenue Code.

Insofar as plaintiffs are seeking damages on the grounds that the government violated their constitutional rights, the government has not waived its immunity with respect to such a suit.

Finally, the complaint was subject to dismissal for failure to state a claim. Plaintiffs have based their claim for damages on the grounds that as non-resident aliens they are not subject to tax. Such allegations are patently frivolous and justify the district court in planning to impose sanctions against them for bringing a wholly baseless action.

The January 14, 1997, judgment is affirmed.

UNITED STATE COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. September 9, 1997

United States of America, et al.,

O R D E R

On consideration of the "Motion to Consolidate" filed by Plaintiffs-appellants on June 23, 1997.

IT IS ORDERED that the motion is DENIED.

NOT SIGNED BY ANY CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al., Filed October 23, 1997

Case No. 97-1635 v.

United States of America, et al.,

PETITION FOR REHEARING

The appellants, Clyde W. LaRue, et al., petitions the court for rehearing pursuant to Federal Rules of Appellate Procedures (hereinafter referred to as FRAP) Rule 35 and Rule 40.

QUESTIONS PRESENTED

1. Is appellants case a "successive appeal" as defined in Operating Procedures Rule 6(b).
2. Should same three Judges whom determined original record of 95-2768 involving some of the appellants be appointed to decide facts herein involving other appellants in 97-1625?
3. Did District Court incorrectly construe facts of case?
4. Did Judges Cummings, Pell,Jr. and Flaum incorrectly decide the facts in this case which distinguish 97-1635 from 95-2768?
5. Did Appellants exhaust their administrative remedies prior to commencement of 97-1635 pursuant to 26 U.S.C. § 7433?
6. Does claims that appellee is construing Federal Reserve notes received by appellants as securities of value, when no such value attends to such securities,

sufficient to state a claim for which relief can be granted.

7. Did Court error in dismissing Clyde W. LaRue?

BACKGROUND

On February 2, 1995, some of the appellants filed a complaint seeking a "refund" or "return" of all improperly collected taxes. In general, plaintiffs' claimed that they were Citizens of Article IV, Section 3, cl. 1 Illinois. Plaintiffs' believed that they had been improperly treated by the United States on grounds that the United States was construing its enumerated authority beyond the scope of the Constitution. In March of 1995, the defendant United States, represented by Gerald H. Parshall, Jr. filed a Motion to Dismiss pursuant to the Courts not having subject matter jurisdiction. On May 8, the District Court, Judge Mills, Granted the defendant's Motion to Dismiss because plaintiffs' failed to **exhaust their administrative remedies**. Plaintiffs' appealed and on March 21, 1996, the Appellate Court of Cummings, Pell, Jr. and Flaum issued an order dismissing all of the appellants in 95-2768 on grounds that appellant LaRue was the only one to sign the "Notice of Appeal."

On April 2, 1996, docket # 77, all other appellants originally in 95-2768 quickly filed an "Amended Notice of Appeal" wherein the apparent deficiency addressed by the Court in its order of March 21, 1996 was perfected. This amended notice of appeal created a new district court case number which was not addressed in this Court's decision in 95-2768 nor has such case number received any attention.

Beginning in March of 1996, and realizing that exhaustion of remedy appeared to be a real issue with the judiciary, appellants, each of them, filed a treasury claim pursuant to 26 CFR 301.7433 on grounds that this seemed to be the administrative remedy dealing with 26 U.S.C. § 7433 claims against the United States. The district court and this Court had previously misconstrued plaintiff's complaint in attempting to compare plaintiffs' language of its' complaint to that of a "refund" action pursuant to 26 U.S.C. § 7422. This was partly due to semantics and partly due to the defendant perfecting confusion on the judiciary **intentionally.**

Appellants in 95-2768 and other appellants also contained in 97-1635 began the faithful attempt to accomplish administrative exhaustion even though some appellants were involved in an ongoing appeal in case # 95-2768. The rationale used was that appellants believe that they have been wronged and deserve for the allegations of their complaint to be construed as true until proven otherwise and that a administrative procedure was not going to prevent final adjudication. Appellants, pursuant to 26 CFR. 301.7433 and 26 U.S.C. § 7433(d)(1), prior to it's amendment, were allowed to be maintain an action pursuant to 26 U.S.C. § 7433(a) upon being construed by the Court to have exhausted their administrative remedies pursuant to 26 CFR 301.7433-1(d)(2)(ii), that is "the date six months after the date an administrative claim is filed in accordance with paragraph (e) of this section."

Appellants' six months from March of 1996 was due to expire in mid September of 1996. An option the Appellees had was to render a decision on appellants claims prior to the six months expiration at 26 CFR 301.7433-1(d)(2)(i) which would likewise allow appellants action to be maintained in any federal district court if appellants were unhappy with appellees decision. Knowing this, however, appellees decided to remain silent with regard to appellants claims filed in March of 1996, thus invoking 26 CFR 301.7433-1(d)(2)(i) jurisdiction.

On September 3, 1996, this Court ruled in 95-2768 that the district courts order of May 8, 1995 and June 21, 1995 were correct because plaintiff[s] "must first exhaust hi[s] administrative remedies. 26 U.S.C. § 7433(d)(1). This exhaustion requirement is jurisdictional."

This Court went on to say "the only potential evidence of exhaustion presented by LaRue is a document entitled "second codicil, with two attachments....they do not contain the necessary information to qualify as administrative claim under either... § 7433. See 26 CFR § 301.7433-1." LaRue v. Collector, 95-2768.

On September 26, the appellants herein instigated this action against the United States and named individuals, whom part of the time were employed by the United States and part of the time were within their private capacities, sued individually and officially, after having exhausted their administrative remedies pursuant to 26 CFR 301.7433-1. See Plaintiffs district court exhibit "A."

Upon the expiration of 20 days after perfected notification upon individual characters therein named, appellants' moved for Default Judgement on grounds appellees silence extending from March of 1996, was continuing, as thought by appellants would be the case.

On November 27, 1996, appellees qualified counsel herein, filed a convoluted motion which included six different types of moves; 1) Motion to Dismiss; 2) Motion for Injunction; 3) Suggestion of Sanctions; 4) Response to Default Request; 5) Request for other Relief; 6) Together with legal discussion on all points. At no time did the Appellee request for plaintiffs' complaint to be dismissed on grounds plaintiffs' "case failed to state a claim upon which relief may be granted." District Court Order of January 14, 1997.

Within 14 days, appellants filed a Motion to Strike Appellees six-way motion for numerous reasons. The most important one was that it failed to say anything about the appellants claims therein now filed and exhausted. No request was made by the appellee to dismiss plaintiffs' claim for failure to state a claim to which relief can be granted. No request was made by the appellee to dismiss plaintiffs' case for failure to state a claim upon which relief can be granted as the district court stated within its order of January 14, 1997, 959 F.Supp. 957(CD ILL. 1997). This Court could not identify on [a]ny one single page out the six-way motion, which liberally suggested such a move was requested. Appellees requested the district court attach their Motion to Dismiss filed in 95-3036 to which some

appellants were not a party with 96-3270.

On September 8, 1997, this Court Ordered that "this successive appeal has been submitted to the original panel under operating procedures(6)(b)." Appellants object to this Court's determination that appellants new case should be considered by the same panel under the successive rule procedure. This case is not successive and does not contain the same parties, the same evidence, the same jurisdiction and no comparable decision could be reached. There are no doubt some comparisons but none that warrant a successive appeal determination.

The district court, amidst appellants objections, continues to misconstrue appellants as residents of illinois. The Court continues to find that appellants' "concede that they are residents of Illinois." Why is the Court making such a big deal about whether or not the Appellants allege they are non-residents? This is an issue of fact which if any disputes should arise it should not be by the district court but by the parties opposing such allegations. Appellants have not conceded this fact and are continuing there objection herein. Appellants are either residents, non residents or citizens. The Court keeps asserting that appellants concede they are residents of illinois but the Courts will not identify the particular facts which support its conclusion. This conduct is evasive, arbitrary and capricious and clearly unconstitutional.

The district court also rejected plaintiffs' claim of involuntary servitude because plaintiffs have not established they are slaves or otherwise subject to

involuntary servitude. What?

The Court also decides that "Plaintiffs' never filed an administrative claim for a tax refund with the Internal Revenue Service so that the district court did not acquire jurisdiction over the claim for refund of federal income taxes." Plaintiffs' never filed any "claim for refund of taxes" pursuant to 26 CFR 301.7422. This decision is preposterous! It is very difficult to continue to request for a rehearing maintaining respect for judiciary, if the Court deciding the request is going to misconstrue the facts of this case in comparison to the misconstrued findings of Judges Cummings, Pell, Jr. and Flaum.

Hello, has anyone read this document this far. If you have then you are very aware of the abuse that the appellants are being afforded from this Court. It appears that this rehearing request is a step required to be considered for the Supreme Court. You can help your Country by reconsidering this decision upon its merits and not upon the misconstruction of certain parties and non-parties.

ARGUMENT

The President signed an amendment to the taxpayer's bill of rights on July 30, 1996, which allowed for actions for damage claims to be maintained even though administrative remedies were not exhausted. 26 U.S.C. § 7433(d)(1) as amended. This is a inherent waiver of sovereign immunity regardless of any claims being filed pursuant to § 7433.

This Courts statements regarding appellants "seeking damages on the ground that the government violated their constitutional rights, the government has not waived its immunity with respect to such a suit." This decision alone is false and the Seventh Circuit Court is very aware of this fictitious conclusion.

Plaintiffs' have not based their claims for damages on the grounds that as non-resident aliens they are not subject to tax. Plaintiffs' based their claims for damages on grounds that "all U.S. obligations received by the Petitioners (Plaintiffs) are gross securities defined at 26 U.S.C. § 165(g) from sources without the United States. Plaintiffs' Complaint at Pg. 3 Prg. 1

In this Courts order of September 8, 1997, the Court characterized appellants claims that they claimed "$"1,000,000 "Judgement Damages" plus economic damages of "$"20,000,000 per each claimants. Appellants object to this "$" as not indicative of appellants claims. Appellants do not know what "$" means. Appellants requested One Million Dollars of value as Judgement Damages and Twenty Million Dollars of value as economic damages. Nice try!

Finally with regard to Sanctions, no one, including Clyde LaRue, received any advance notice that the appellate court was going to impose sanctions in 95-2768. Appellate record indicates that attempts to discharge such debt have not been accepted until after this appeal was instituted. The appellate record does not indicate that party Clyde W. LaRue has not paid prior sanctions imposed by this Court. No evidence exist in support of such finding.

On the other hand, evidence does exist that party Clyde W. LaRue has attempted to discharge such debt. No show cause motion was filed by the Circuit Court notifying appellants that the Court was considering sanctions in 95-2768. This violates due process clause of the Fifth Amendment.

Appellants, after being notified of the Courts posture with regard to the numerous motions struck by the Court between January 14, 1997 and March 20, 1997, because the district court could not make up its mind on how it wanted certain pleadings filed, filed a motion to consolidate the record for appeal involving the Order of January 14, 1997 with that of April 2, 1997. This was after this Court noticed the appellants that if they intend to appeal the sanctions, they must file a motion to consolidate. The record clearly shows the appellants intent and this Court should carefully investigate the issues within 96-C-3270.

Therefore, appellants, Clyde W. LaRue, et al., request the Court grant this Petition for Rehearing on the merits of Appellants original Complaint, reverse this Courts order of September 8, 1997, this Courts sanctions on September 3, 1996, and all other pleadings this record seems clearly to contradict as well as assign this case to a new three judge panel.

Respectfully Submitted
SEE SIGNATURE PAGES

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. Filed October 23, 1997

United States of America, et al.,

PETITION FOR REHEARING

The appellants, Clyde W. LaRue, et al., petitions the court for rehearing pursuant to Federal Rules of Appellate Procedures (hereinafter referred to as FRAP) Rule 35 and Rule 40 on its order of September 9, 1997, wherein the Court arbitrarily denied appellants "Motion to Consolidate." Appellants have pending a previously filed "Petition for Rehearing" which was filed involving the Order of this Court "affirming" the district court's orders of January 14, 1997 and April 2, 1997.

QUESTIONS PRESENTED

1. Should Motion to Consolidate be considered prior to Circuit Court entering order and judgement?
2. Should same three Judges whom determined original record of 95-2768 involving some of the appellants be appointed to decide facts herein involving other appellants in 97-1625?
3. On what grounds did Circuit Court "Deny" appellants Motion to Consolidate filed June 23, 1997?

BACKGROUND

On September 3, 1996, this Court ruled in 95-2768 that the district courts order of May 8, 1995 and June 21, 1995, were correct because plaintiff[s] "must first exhaust hi[s] administrative remedies. 26 U.S.C. § 7433(d)(1). This exhaustion requirement is jurisdictional."

This Court went on to say "the only potential evidence of exhaustion presented by LaRue is a document entitled "second codicil, with two attachments....they do not contain the necessary information to qualify as administrative claim under either... § 7433. See 26 CFR § 301.7433-1." LaRue v. Collector, 95-2768.

On September 26, 1997,the appellants herein instigated this action against the United States and named individuals, whom part of the time were employed by the United States and part of the time were within their private capacities, sued individually and officially, after having exhausted their administrative remedies pursuant to 26 CFR 301.7433-1. See Plntfs district court exh. "A."

Upon the expiration of 20 days after perfected notification upon individual characters therein named, appellants' moved for Default Judgement on grounds appellees silence extending from March of 1996, was continuing, as thought by appellants would be the case.

On November 27, 1996, appellees qualified counsel herein, filed a convoluted motion which included six different types of moves; 1) Motion to Dismiss; 2) Motion for Injunction; 3) Suggestion of Sanctions; 4) Response to Default Request; 5) Request for other Relief; 6) Together with legal discussion

on all points. At no time did the Appellee request for plaintiffs' complaint to be dismissed on grounds plaintiffs' "case failed to state a claim upon which relief may be granted." District Court Order of January 14, 1997.

Within 14 days, appellants filed a Motion to Strike Appellees six-way motion on numerous grounds. The most important ground was that it failed to say anything about the appellants claims therein now filed and exhausted. No request was made by the appellee to dismiss plaintiffs' claim for failure to state a claim to which relief can be granted. No request was made by the appellee to dismiss plaintiffs' case for failure to state a claim upon which relief can be granted as the district court stated within its order of January 14, 1997, 959 F.Supp. 957(CD ILL. 1997).

Appellants, after being notified of the Courts posture with regard to the numerous plaintiffs' motions struck by the Court between January 14, 1997 and March 20, 1997, because the district court could not make up its mind on how it wanted certain pleadings filed, docketed a motion to consolidate the record for appeal involving the Order of January 14, 1997 with that of April 2, 1997. This was after this Court noticed the appellants that if they intend to appeal the sanctions, they must file a motion to consolidate. The record clearly shows appellants intent and this Court should carefully investigate the issues within 96-C-3270.

On March 28, 1997, this Court made a "preliminary review" of the short record" and issued an "O R D E R" which instructed the appellants to file a "Jurisdictional Memorandum" explaining why the Appellants'

Notice of Appeal was **NOT** "premature." The Court cited Charles v. Daley, 799 F.2d 343, 347 (7th Circuit 1986) in support of its allegation. As such, the Court said, "this appeal may be premature, because it appears that the district court has not disposed of the motion and entered its order on the district court's civil docket.

Accordingly, IT IS ORDERED that appellants shall file, on or before April 8, 1997, a brief memorandum stating why this appeal should not be **STAYED** pending the entry of the order disposing of the motion. Briefing shall be suspended pending further court order."

Obviously, the district court entered its order regarding sanctions on April 2, 1997, in direct compliance with this Courts order of March 28, 1997. Since this case was not properly disposed of at the time the appellants filed their "Notice of Appeal," the appellants, after suggestion by this Court, filed their Motion to Consolidate intending to encompass the docket through the April 2, 1997, district court order. The appellants did not file a "Jurisdictional Memorandum" on grounds the district court disposed of "thought to be" timely filed R. 59 motion prior to April 8.

Therefore, appellants, Clyde W. LaRue, et al., request the Court grant this Petition for Rehearing on the merits of Appellants original Complaint, reverse this Courts order of September 9, 1997, assign this case to a new three judge panel and reverse its decision involving appellants motion to consolidate, affording, in the alternative, at a bare minimum, why the Motion to Consolidate was decided as denied for appeal purposes.

Respectfully Submitted SEE SIGNATURE PAGES

UNITED STATE COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. October 30, 1997

United States of America, et al.,

ORDER

On consideration of the petition for rehearing filed by plaintiffs-appellants on October 22, 1997, all of the judges on the panel have voted to deny rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

Signed by: Walter J. Cummings, Circuit Judge
Wilbur F. Pell, Jr, Circuit Judge
Joel M. Flaum, Circuit Judge

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK

February 27, 1998

Mr. Clyde W. LaRue, et al.,

Re: Clyde W. LaRue, et al.
v. United States, et al.
Application No. A-648

Dear Mr. LaRue:

The application for an extension of time within which to file a petition for a Writ of Certiorari in the above entitled case has been presented to Justice Stevens, who on February 27, 1998, extended the time to and including March 27, 1998.

Signed by the Clerk

Gail B. Johnson
Assistant Clerk